IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

THURSDAY, THE 23RD AUGUST 2007 / 1ST BHADRA 1929

WP(C).No. 25020 of 2007(C)

PETITIONER:

K.K.GOPALAKRISHNAN, S/O KARIYAM,
KALLOOPARAMBIL HOUSE, SANTHARAMANGALAM,
PATTAMBI, - LICENCEE OF T.S.NO.18/07-08
(MANNUTHY SHOP) OF THRISSUR RANGE.

BY ADV. SRI.B.GOPAKUMAR
SMT.CHINCY GOPAKUMAR

RESPONDENTS:

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1. THE EXCISE COMMISSIONER,
THIRUVANANTHAPURAM.

2. ASSISTANT EXCISE COMMISSIONER,
EXCISE DIVISION OFFICE, THRISSUR.

3. THE CIRCLE INSPECTOR OF EXCISE,
THRISSUR.

BY GOVT. PLEADER SRI.I.V.PRAMOD.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 23/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

S. SIRI JAGAN, J.

WP(C) NO. 25020 OF 2007 - C

Dated this the 23rd day of August, 2007

J U D G M E N T

The petitioner was a successful bidder in an auction for toddy shops. He filed Ext.P2 application for permission to conduct T.S.No.18, Mannuthi Toddy Shop in the location referred to in Exts.P2 and P3, which was rejected by the second respondent by Ext.P4 communication on the basis of a report of the third respondent on the ground that a temple is situated within the prohibited distance of 400 meters from the toddy shop. According to the petitioner, the temple is a private temple which would not come within the purview of the rules regarding such prohibition. The petitioner therefore filed Ext.P5 appeal before the Excise Commissioner. Pursuant to Ext.P7 judgment, Ext.P8 order has been passed whereby the application was again rejected on the ground that the temple is not a private temple, but the temple is coming within the

purview of the rules and the site applied for licensing of T.S.No.18/07-08 is an objectionable one. The petitioner would dispute the above finding. According to him, if the petitioner had been given notice of the inspection stated to have been conducted by the Deputy Commissioner of Excise, he would have been able to satisfy him that the temple is not a public temple, but a private temple, not coming within the purview of the rules. The petitioner therefore seeks quashing of Ext.P8 and reconsideration of his appeal afresh.

2. I have considered the rival contentions in detail.

3. In Ext.P8 order, it is stated thus:-

> "..... On compliance of the order of the Hon'ble High court of Kerala, the Excise commissioner directed the Deputy Commissioner of Excise, Central Zone for a spot inspection and to verify the correctness of the decision taken by the Assistant Excise Commissioner, Thrissur against the T.S.No.18/07-08 of

Mannuthy of Thrissur Range.”

From the same, it is clear that the Commissioner of Excise has purely relied on the report of the Deputy Excise Commissioner verifying the correctness of the decision taken by the Assistant Excise Commissioner, Thrissur which was not what was contemplated. The least the Excise Commissioner could have done is to direct the Deputy Commissioner of Excise to inspect the premises with notice to the petitioner.

4. That being so, I am satisfied that Ext.P8 order has been passed on the basis of a report obtained behind the back of the petitioner. Therefore, Ext.P8 is quashed and the first respondent is directed to reconsider the petitioner's appeal afresh after obtaining a report from some officer other than the Deputy Excise Commissioner who is stated to have conducted a spot inspection, with prior notice to the petitioner regarding

such inspection. This shall be done within a period of one month from the date of receipt of a copy of this judgment.

The writ petition is disposed of as above.

S. SIRI JAGAN,
Judge

Mbs/

S.SIRI JAGAN, J

W.P.(C) NO. OF 2001

J U D G M E N T

DATED: -08-2007